

State of Maryland
State Higher Education Labor Relations Board

In the matter of:)
)
Cheryl Summers Hain,)
)
Petitioner,)
)
and)
)
American Federation of State,)
County & Municipal Employees,)
on behalf of Nonexempt Employees,)
)
Respondent,)
)
And)
)
The University of Baltimore,)
Agency/Employer.)
_____)

SHELRB Election Case No.
EL 07-01, University of Baltimore
Nonexempt Unit

FINAL ELECTION ORDER

A valid petition having been filed in the above-captioned matter with the State Higher Education Labor Relations Board (Board), in accordance with Title 3 of the State Personnel and Pension Article (SPP), 2001 Supplement, and the Regulations of the Board at COMAR §§ 14.30.04 and 14.30.05.

Pursuant to the authority vested in the Board by Regulations at COMAR §14.30.05.06 et.al., the Executive Director of the SHELRB hereby issues the following Final Election Order for a decertification / election proceeding in the Nonexempt Unit at the University of Baltimore:

IT IS HEREBY ORDERED THAT:

A decertification / representation election shall be held for the Nonexempt Unit employees of the University of Baltimore;

The election choices shall be:

- 1.) American Federation of State, County and Municipal Employees ^{1/}
- 2.) No Exclusive Representative

I. Date, time, location and method of election

The election shall be held on **Wednesday, August 29**; the hours of in-person voting shall be as follows:

- 6:00 am
- 6:00 pm

The election shall be held in the **Law Center Moot Court Room**, as provided below.
The election shall be conducted by secret ballot on paper.

Mail Ballots

Mail ballots shall be sent to eligible voters who will be on leave or on an off campus assignment during the hours of the election. Any employee who is eligible to vote in this election and expects to be on leave or on assignment away from the campus on August 29, 2007, may request an absentee ballot:

- a.) In writing, either on a SHELRB form provided, or by personal letter, either method requiring an authentic, original signature of the employee, and dated by the employee;
- b.) To be sent to the following address:
MD State Higher Education Labor Relations Board
Suite 400
839 Bestgate Road
Annapolis, MD 21401
- c.) Said request must be received by the Board no later than Tuesday, August 14, 2007
- d.) In order to be counted as a valid ballot, a marked absentee ballot issued in accordance with the rules and requirements listed herein, specifically:
 - 1) must be marked and signed in accordance with balloting materials
 - 2) must be received by the Board no later than 5:00pm August 28, 2007
- e.) If an eligible employee who has requested an absentee ballot presents him or herself to vote in person on August 29:

^{1/} Based on the Board Order issued on 4/27/07, any intervening petition shall be due 15 days after the issuance of this Final Election Order, along with a 10% showing of interest.

- 1) said individual's mailed ballot shall be located and marked as ineligible to be opened or counted because individual has voted in person; and,
- 2) said individual shall be issued a ballot as per other present voters and voter eligibility list shall be marked to indicate he/she has voted in person and voided any absentee ballot that may have been submitted.

II. Rules Governing the Election

The election shall be conducted according to the rules set forth below. Any conflict between the rules provided below and Title 3 the SPP, §§ 3-101 – 3-602 and/or the Regulations of the Board, COMAR §14.30.01 – 11, rulings shall be decided by the statute and the regulations.

III. Withdrawal of Decertification Petition

Withdrawal of decertification petition shall be subject to the requirements as stipulated in the proposed Board regulation on candidacy withdrawal at COMAR §14.30.05.05(D); subject to any applicable window period.

IV. Notice, Sample Ballots, Balloting Methods, Voter Sign-In rules and procedures for the University of Baltimore Nonexempt Unit Decertification election

A. Final Election Order—the Executive Director shall send or deliver the final election order no later than Friday, June 8, 2007 to:

1. The petitioner (Cheryl Summers Hain),
2. The employer (University of Baltimore),
3. The American Federation of State County & Municipal Employees (incumbent exclusive representative)

B. The Board shall provide by mail a Notice of Election and Sample Ballot and such other information as it deems appropriate to each eligible employee of the nonexempt unit at the University of Baltimore using labels provided by the employer. The University of Baltimore shall provide labels to the Board no later than close of business on June 18, 2007.

1. Sample Ballots shall be a reasonable representation of the actual ballot to be used during the election;

2. Notice and Sample Ballot shall include information about the requirement that voters bring Photo ID with them to vote;

3. Notice and Sample Ballot shall include information banning the wearing or distribution of campaign paraphernalia within certain areas on the day of the election.

C. Posting of Notice

1. The Notice of Election and Sample Ballot shall be posted in public display at the Maryland Higher Education Commission/SHELRB offices;

2. The employer shall post the Notice and the Sample Ballot at all work locations where notices are customarily posted for the benefit of employees;

a. the employer shall post the Notices and Sample Ballots no later than August 8, 2007;

b. the employer shall take reasonable precautions to ensure that posted notices of election and sample ballots shall not be altered, covered, defaced, or removed before the completion of the election.

3. The Executive Director shall post this Order on the SHELRB website at www.mhec.state.md.us/shelrb, as per Board Regulation COMAR §14.30.04.09.

D. Ballots

1. Paper ballots—the Executive Director shall prepare official paper ballots which shall be made available to all voters, including voters who appear at the polling site but have been challenged.

2. The Executive Director may adopt appropriate means to guarantee the authenticity of ballots used in the election.

3. All eligible voters who seek to vote in person shall present a photo ID to verify their identities.

4. Prior to voting by secret paper ballot,

a. voter will sign name or make appropriate mark on the official eligible voter list held by the Board's election clerks;

b. clerk will strike through voter name or otherwise clearly indicate that the voter has appeared;

c. voter, once issued ballot, will be directed to an area to mark ballot in secret;

d. voter will deposit ballot in ballot box and immediately leave the designated polling area.

5. Ballots shall contain the choices of, in order of appearance,

- 1.) American Federation of State, County and Municipal Employees; and
- 2.) No Exclusive Representative.

V. Voter Eligibility, Lists, Accessibility, and Confidentiality

A. Employees eligible to vote are those who

1. Meet the applicable requirements defining covered employees in the SPP § 3-102;
2. Were employed by the University of Baltimore on the last pay period ending prior to the issuance of this Order.
3. Are employed by the University of Baltimore as Nonexempt unit employees on the date of the election. Eligible employees who have a reasonable expectation of continued employment shall be considered to be working on the election day despite being on leave or on assignment away from campus. Such employees shall be permitted to request an absentee ballot as per this Order.

B. Eligible voter lists

1. No later than June 18, 2007, the employer shall make available or mail an up-to-date eligible voter list for the Nonexempt unit employees to a.) the American Federation of State, County and Municipal Employees, and b.) the Executive Director.
2. The eligible voter list shall contain the following information for each employee in the unit who is eligible to vote:

- a. full name, department, and job title;
- b. work site address (building and room number);
- c. names of Nonexempt employees who are excluded and reason for exclusion.
- d. names of any eligible employees who by virtue of assignment will not be on campus during the hours of the on site election for such reasons as assignment to training, regularly scheduled off day (as a “weekend” day), or other official reason; or,
- e. eligible employees who are on active military duty.

Note: For individuals under (d) and (e), above, the employer will provide the Board with a postal address to be used for the sole purpose of providing absentee ballots. The Board will protect the confidentiality of such addresses.

3. The employer (University of Baltimore), the petitioning party, and any other candidate unions are encouraged to meet in a timely manner prior to the election to discuss any questions regarding an employee's eligibility or excluded status in order to minimize challenges during the election.

a. in the event, as a result of any such meetings and discussions, the eligibility list would be altered by agreement of the University of Baltimore and other parties to the election, a new updated list shall be provided to the Executive Director no less than 48 hours prior to the commencement of the onsite election;

b. changes agreed to by the parties shall be clearly identified to the Executive Director in a separate list.

C. Access—there shall be equal access for the candidate union and eligible employees on behalf of any ballot choice.

1. Nonexempt unit eligible employees, and the American Federation of State, County and Municipal Employees, shall enjoy the right of reasonable access to college and university facilities, including grounds, rooms, bulletin boards, campus mail, and other common areas and forums for the purpose of conducting speech activities regardless of their position on any ballot choice.

2. The University of Baltimore may not alter or revise existing speech access rules or practices for the campus community or general public in order to limit unfairly or prevent employees, or the American Federation of State, County and Municipal Employees.

3. The employer may not discriminate against an employee's private speech in the workplace based on its labor-related content or viewpoint.

4. While the Board encourages maximum participation by eligible employees in the election, each eligible employee has the absolute right to decide for him- or herself a position on the ballot choices or to decide not to participate and/or not to vote.

D. Confidentiality of employee addresses

1. Any direct mail to eligible unit voters by the Board, the exclusive representative, or the petitioner, shall not compromise the confidentiality of employee home addresses;

2. The University of Baltimore shall make available eligible employees' home addresses to the exclusive representative and the petitioner, at the exclusive representative's and petitioner's expense, through a third party mail service two times during the campaign period, provided that all such communications from the exclusive representative and the petitioner contain prominently this statement:

By Order of the Higher Education Labor Relations Board, the University of Baltimore has provided employee home addresses to a confidential mail facility. Your home address was not provided *to the exclusive representative or to the petitioner*, or to any third party and will not be distributed or used except as provided in this order. If you have any questions, call Erica L. Snipes, SHELRB Executive Director, 410-260-3216.

VI. Conduct of the Election

- A. The anonymity of ballots shall be maintained to the greatest extent possible.
- B. Responsibility for the Election

1. The Executive Director on behalf of the Board shall be solely responsible for the conduct of the election; the polling site and immediate environs; voting materials, including ballots and the counting of ballots, recording of results, and certification of the accuracy of the count^{2/}, and certification of results of the election, subject to final Board approval.

2. The Executive Director shall appoint herself or a qualified representative to be the Election Supervisor and assistant election supervisors and clerks as needed who shall perform the duties required for a fair and impartial election;

a. the Executive Director shall retain final responsibility to certify election results subject to Board authority;

b. all decisions of the Election Supervisor, if other than the Executive Director, may be challenged and appealed to the Executive Director within five (5) working days of the election.

3. The University of Baltimore, as employer, shall grant reasonable release time to employees so that they can vote during their workday or shift. Except in unusual circumstances, employees shall notify their supervisors when they are taking this time to vote—supervisors shall be involved only to ensure adequate coverage of University operations. The location of the polls shall be handicap-accessible. No employee shall be discouraged by any entity from going to the polling location and voting, nor shall any

^{2/} The accuracy of the count shall be attested to by Cheryl Summers Hain, petitioner, the American Federation of State, County, and Municipal Employees, on behalf of nonexempt employees, and by a representative from the University of Baltimore.

employee be forced by any entity to go to the polling place to vote. The University of Baltimore shall provide that parking near the polling site is available to eligible voters and shall provide parking for Board staff.

4. The boundaries of the polling area shall be clearly designated and marked by the Election Supervisor as circumstances may require. Specifically, the following shall be the boundaries:

½ the distance from the front of the Law Center to Mount Royal Avenue and between the Academic Center and Charles Hall and Maryland Avenue

a. no campaign literature, paraphernalia, or clothing shall be distributed or worn within the proscribed polling area during the period of voting;

b. the Board may set aside an election outcome favorable to a party who substantially violates the provisions of this Order.

5. Any eligible voter in line to vote at the close of the polling period shall be allowed to vote.

C. Election Observers

1. Cheryl Summers Hain, petitioner, the American Federation of State, County and Municipal employees, on behalf of Nonexempt unit employees, and the University of Baltimore, shall designate to the Executive Director in advance of the opening of the polls on the date of the election, the names of persons who shall serve as observers during the election. All lists of observers shall be due to the SHELRB Office and to the University of Baltimore no later than close of business on August 22, 2007.

a. In general, the employer, petitioner, and all other parties to the election must have one representative present for all stages of the election process.

b. each party must have one observer at any given time to monitor the ballot box areas in such a manner as not to compromise the privacy of the voting;

c. each party must have one observer only during the tally period; said observer shall be the sole spokesperson for that party during the tally period and shall attest to the accuracy of the count on a form provided by the Board;

d. observers may not campaign or converse with voters during their service nor in any way interfere with the voting process; any concerns must be directed to the Election Supervisor;

e. exchange of observer lists must occur outside the polling area as approved by the Election Supervisor;

f. observers may be eligible voters; the employer is required to provide release time for an employee to serve as an observer;

g. observers, except the one serving during the tally period, may not have managerial authority or supervisory power over eligible Nonexempt unit employees;

h. any member of the Board may observe the voting at any time.

D. Challenged and Void ballots, Absentee ballots, and Ballot counting

1. Challenging of voters' right to cast ballots

a. any prospective voter may be challenged by an official observer for cause notwithstanding the efforts prior to the election of the parties to meet and resolve differences regarding employee eligibility;

b. a prospective voter whose name is not on the approved and official eligibility list shall be challenged by the Board for the reason, "Not on the List".

c. a voter challenged for cause:

i. shall vote, place his or her ballot in a "secret ballot" envelope which is then deposited by the voter in a "challenged ballot envelope" containing information on the outside of the identity of the voter, the reason for the challenge, and the maker of the challenge; the outside may also contain markings related to the investigation of the validity of the challenge and resolution, if any.

ii. The large challenged ballot envelope containing the unidentifiable white secret ballot envelope shall then be placed into the ballot box, preferably by the voter.

2. Challenged ballots shall be considered at the conclusion of the regular tally only if the number of their total could affect the outcome of the election (i.e., are "determinative");

a. the total of ballots cast shall be considered initially to determine the highest tally required for a majority to be reached by a choice;

b. if there are enough challenged ballots to affect the outcome, the Election Supervisor shall resolve the validity of the challenges if possible and may do so only to the point at which the remaining number is no longer determinative.

3. Void ballots—the Election Supervisor shall determine a ballot void if the ballot does not reveal the intent of the voter due to mutilation, soiling, or any other reason:

- a. a void ballot shall not be counted as a ballot cast;
- b. a voter may request a replacement ballot for a mis-marked one provided that the mis-marked ballot has not been deposited in the ballot box and has been returned to the Election Supervisor who shall mark it “void” prominently; all voided ballots shall be kept separately in the election record;
- c. a ballot on which a voter has marked a name—presumably his or her own—shall be deemed to constitute a waiver of anonymity; other words or marks on a ballot shall not make the ballot void if otherwise the intent of the voter is clear; a question mark or other mark other than X or a checkmark within the appropriate box shall be construed as evidence of positive intent for that choice.

4. Unchallenged Ballots shall be counted immediately following the conclusion of the voting period and results shall be announced as soon as known by the Election Supervisor:

- a. counting shall occur in plain view of the public in the Moot Court Room; challenges and inspection of ballots shall be limited to official observers as specified in section b., below;
- b. Cheryl Summers Hain, petitioner, the American Federation of State, County and Municipal Employees, on behalf of Nonexempt employees and the University of Baltimore, shall each designate one specific observer/representative to observe the tabulation and act on the party’s behalf; only one specified observer/representative may act during the counting period on behalf of the designating party;
- c. the marking and thus crediting of a ballot as called by the Election Supervisor may be challenged; any such ballot shall be set aside and its tally included as called, subject to later review.

5. All ballots, challenged or otherwise, and envelopes shall be retained by the Executive Director and archived by the SHELRB for as long as required by law or regulation. Parties’ observers may be requested to sign across seals of balloting materials.

E. Determination of Election Outcome

- 1. Majority vote required—more than 50% of the valid ballots cast is required for any party to the election to be determined winner of the election (e.g., 13 of 25);
- 2. Tie vote—the American Federation of State, County and Municipal Employees will be decertified, given that a majority vote is required for any party to win the election.

VII. Report of Election and Certification of Representative

A. Within seven (7) working days after an election, the Executive Director shall certify the results of that election. Prior to this certification, any announcement of results shall be deemed “unofficial.”

B. If “No Exclusive Representative” receives a majority of votes, the Executive Director shall certify that the incumbent exclusive representative, the American Federation of State, County and Municipal Employees is decertified, and the Nonexempt unit at the University of Baltimore is without an exclusive representative.

C. If the American Federation of State, County and Municipal Employees receives a majority, the Executive Director shall so certify.

D. The Executive Director shall report by mail the result of the election and the certification of the bargaining unit to Cheryl Summers Hain, petitioner, the American Federation of State, County and Municipal Employees, on behalf of Nonexempt employees; the employer, the University of Baltimore; and the State Higher Education Labor Relations Board.

E. Objections to the conduct of Board agent

Within eight (8) days after the election results are certified by the Executive Director, any party who objects to any action of the Executive Director in conducting an election as having materially prejudiced the party and likely changed the outcome of the election may request a hearing before the Board.

F. Objections to the conduct of a party^{3/}

1. Within eight (8) calendar days after election results are certified by the Executive Director, any party to the election who objects to prejudicial conduct of another party may file an objection with the Executive Director.

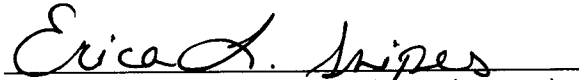
2. Any activities of a party to this election which materially compromise the secret ballot process, effectively disenfranchise eligible voters, or otherwise substantially interfere with laboratory conditions of a free and fair election are grounds for such an objection.

3. The Executive Director may examine such an objection and render a decision. The Executive Director’s decision may be appealed to the Board within seven (7) calendar days of receipt of his decision.

^{3/} Although the Board’s regulations refer only to conduct of election judges, board staff, or parties to the election, we will also consider conduct of any individual involved in the election process, which substantially interferes with a free and fair election.

4. If the Board sustains any such objection, it may overturn the results of the election and order a new election.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD



Erica L. Snipes, Executive Director
Annapolis, MD

June 8, 2007

SAMPLE BALLOT

Collective Bargaining Election

University of Baltimore Nonexempt Employees

Date of Election: August 29, 2007

6:00am – 6:00pm

Law Center: Moot Court Room

VOTE FOR ONE OF THE FOLLOWING^{1/}

Mark "X" within the box to the left of your choice

☐ **AFSCME**

**American Federation of State, County
and Municipal Employees**

☐ **No Exclusive Representative**

This election is conducted under the authority of the State Higher Education Labor Relations Board, Hon. Robert R. Neall, Chair.

Authority: State Personnel & Pensions Article §3-2A-05, Annotated Code of Maryland

Notice: Eligible voters shall present a valid photo ID in order to receive a ballot.

No one, including voters, may distribute or display visibly any campaign literature, paraphernalia, or clothing within the restricted voting area.

^{1/} Please note that should an intervenor file a petition to be included on this ballot, as per information contained in the election order, that intervenor would be added to this ballot. In all other ways, the ballot would remain the same.